

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff,

v.

JEREMY HUDSON, *et al.*,

Defendants.

Case No. 2:22-cv-02123-RFB-EJY

ORDER

I. INTRODUCTION

Before the Court is the Plaintiff's Motion to Dismiss the Defendant Jeremy Hudson's Counter-Claims. ECF No. 46. For the following reasons, the Motion to Dismiss is denied.

II. PROCEDURAL BACKGROUND

On December 21, 2022, Plaintiff filed the operative Complaint in this case. ECF No. 1. Broadly, the Complaint alleges that Defendant Jeremy Hudson alleged theft of a vehicle that he actually sold. The Complaint requests declaratory relief of State Farm's various legal obligations. On February 7, 2023, Defendant James Burbano filed a Motion to Dismiss. ECF No. 15. On February 13, 2023, Defendant Hudson filed an Answer, Cross-Claim against All Defendants, and a Counter-Claim against All Defendants. ECF No. 17. On February 14, 2023, Defendant Burbano filed an Answer to the Complaint, Crossclaim, and Counterclaim. ECF No. 18. On February 23, 2023, Defendant Jeremy Hudson filed a Motion to Dismiss the Complaint. ECF No. 24. On February 28, 2023, Defendant Thomas Classics filed a Motion to Dismiss. ECF No. 27. On February 28, 2023, Defendant Thomas Classics filed a Motion to Dismiss. ECF No. 28.

On September 19, 2023, this Court held a motion hearing wherein Defendant Hudson's

1 Motion to Dismiss was denied; Defendant Thomas Classics' Motions to Dismiss were granted;
 2 and Defendant James Burbano's Motion to Dismiss was granted. ECF No. 81. On November 15,
 3 2023, the remaining parties submitted a joint discovery plan and scheduling order. ECF No. 83.
 4 On November 15, 2023, Magistrate Judge Youchah approved the discovery plan and scheduling
 5 order. ECF No. 84.

6 **III. FACTUAL ALLEGATIONS**

7 The Defendant's Complaint alleges that on or about February 10, 2021, Mr. Hudson
 8 purchased a 2017 Lamborghini Huracan ("Subject Vehicle") for \$190,000. On or about March 28,
 9 2021, State Farm Automobile Insurance Company ("State Farm") issued Mr. Hudson an
 10 automobile insurance policy ("Subject Policy") for the Subject Vehicle. Mr. Hudson chose to
 11 customize the interior of the Subject Vehicle and brokered an agreement with Mr. Thomas for
 12 various upgrades. Mr. Hudson dropped off the Subject Vehicle to Mr. Thomas. However, instead
 13 of making the requested changes Mr. Thomas forged sale documents and sold the Subject Vehicle
 14 to Wholesale Exotics without Mr. Hudson's knowledge or approval. Wholesale Exotics then sold
 15 the Subject Vehicle to Thomas Classics. Eventually, Mr. Hudson filed a theft report against Mr.
 16 Thomas for theft of the Subject Vehicle. Mr. Hudson subsequently contacted State Farm and
 17 informed the company that the Subject Vehicle was stolen by Mr. Thomas.

18 **IV. LEGAL STANDARD**

19 An initial pleading must contain "a short and plain statement of the claim showing that the
 20 pleader is entitled to relief." Fed. R. Civ. P. 8(a). The court may dismiss a complaint for "failure
 21 to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In ruling on a motion
 22 to dismiss, "[a]ll well-pleaded allegations of material fact in the complaint are accepted as true and
 23 are construed in the light most favorable to the non-moving party." Faulkner v. ADT Sec. Services,
 24 Inc., 706 F.3d 1017, 1019 (9th Cir. 2013) (citations omitted).

25 To survive a motion to dismiss, a complaint need not contain "detailed factual allegations,"
 26 but it must do more than assert "labels and conclusions" or "a formulaic recitation of the elements
 27 of a cause of action" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp.
 28 v. Twombly, 550 U.S. 544, 555 (2007)). In other words, a claim will not be dismissed if it contains

1 “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face,”
 2 meaning that the court can reasonably infer “that the defendant is liable for the misconduct
 3 alleged.” Id. at 678 (internal quotation and citation omitted). The Ninth Circuit, in elaborating on
 4 the pleading standard described in Twombly and Iqbal, has held that for a complaint to survive
 5 dismissal, the plaintiff must allege non-conclusory facts that, together with reasonable inferences
 6 from those facts, are “plausibly suggestive of a claim entitling the plaintiff to relief.” Moss v. U.S.
 7 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

8 A motion to dismiss a counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(6)
 9 is judged by the same standard as a motion to dismiss a claim. A court's inquiry “is limited to the
 10 allegations in the [counter-]complaint, which are accepted as true and construed in the light most
 11 favorable to the plaintiff.” Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 588 (9th Cir. 2008).

12 V. DISCUSSION

13 Defendant's Counter-Claims alleges three claims: (1) breach of contract; (2) breach of
 14 implied covenant of good faith and fair dealing; and (3) bad faith. Defendant also requests punitive
 15 damages. Plaintiff argues that the Defendant's Counter-Claims fail for various reasons. The Court
 16 addresses each cause of action, in turn.

17 A. Breach of Contract

18 The Plaintiff asserts that the breach of contract and bad faith claims fail to allege two key
 19 elements: (1) facts showing a breach of the State Farm policy and (2) damages caused by State
 20 Farm's purported breach. The Defendant asserts that he expected State Farm to tender payment
 21 under the Subject Policy, but instead the company initiated the present matter to avoid payment
 22 based on a theory that Plaintiff allowed the Subject Vehicle to be sold.

23 In order to put forth a breach of contract claim, the petitioner must allege the formation of
 24 a valid contract; performance or excuse of performance by the plaintiff; material breach by the
 25 defendant; and damages. See Bernard v. Rockhill Dev. Co., 734 P.2d 1238, 1240 (Nev. 1987) (“A
 26 breach of contract may be said to be a material failure of performance of a duty arising under or
 27 imposed by agreement.”) (quoting Malone v. Univ. of Kan. Med. Ctr., 552 P.2d 885, 888 (1976)).
 28 An insurance policy is a contract. Senteney v. Fire Ins. Exch., 707 P.2d 1149, 1150 (1985). The

1 counter-complaint alleges that State Farm breached the Subject Policy “by among other things,
2 failing to pay Mr. Hudson for the replacement cost of the Subject Vehicle.”

3 Here, the Subject Policy is a valid contract. Accepting the Defendant’s allegations as true,
4 State Farm breached the contract when it failed to tender the policy after the vehicle was stolen.
5 These non-conclusory facts present a valid claim which would entitle the Defendant to relief.

6 Accordingly, the breach of contract cause of action is properly pled and may proceed.

7 **B. Breach of Implied Covenant of Good Faith and Fair Dealing**

8 The Defendant asserts that Plaintiff violated an implied covenant of good faith and fair
9 dealing by failing to tender the Subject Policy despite clear evidence that Mr. Kofi Thomas stole
10 the Subject Vehicle. Plaintiff argues that this cause of action should be dismissed for failure to
11 actually state a claim since State Farm has not denied coverage to the Defendant, but seeks
12 declaratory relief regarding its duties.

13 Under Nevada law, every contract contains the implied covenant of good faith and fair
14 dealing. K Mart Corp. v. Ponsock, 732 P.2d 1364, 1370 (Nev. 1987). A party may bring a bad-
15 faith tort claim if the covenant is violated. United States Fidelity v. Peterson, 91 Nev. 617, 540
16 P.2d 1070, 1071 (Nev. 1975). Where one party to a contract “deliberately countervenes the
17 intention and spirit of [a] contract, that party can incur liability for breach of the implied covenant
18 of good faith and fair dealing.” Morris v. Bank of Am. Nev., 886 P.2d 454, 457 (Nev. 1994)
19 (quoting Hilton Hotels v. Butch Lewis Productions, 808 P.2d 919, 922-23 (Nev. 1991)). A
20 petitioner may be able to recover damages for this breach when the offending party engages in
21 arbitrary or unfair acts that work to the petitioner’s disadvantage, even if the express terms of the
22 contract have been satisfied. See State DOT v. Eighth Judicial Dist. Court of Nev., 133 Nev. 549,
23 402 P.3d 677, 683 (2017).

24 In order to establish a breach of the implied covenant of good faith and fair dealing, the
25 petitioning party must show the following: (1) the insurance company had no reasonable basis for
26 its conduct in the handling of plaintiff’s claim; (2) the insurance company knew, or recklessly
27 disregarded, the fact that there was no reasonable basis for its conduct; and (3) the insurance
28 company’s unreasonable conduct was a legal cause of harm to the plaintiff. See Falline v. Golden

1 Nugget Hotel & Casino, 823 P.2d 888, 891 (Nev. 1991).

2 Defendant's Complaint alleges that State Farm did not have a reasonable basis for failing
3 to tender under the Subject Policy because the company was aware that the Subject Vehicle was
4 stolen. These allegations are sufficient to properly plead this cause of action.

5 Accordingly, the Defendant's second cause of action for breach of implied covenant of
6 good faith and fair dealing is properly pled and allowed to proceed.

7 **C. Bad Faith**

8 The Plaintiff argues that the bad faith cause of action should be dismissed for failure to
9 state a claim and lack of ripeness. The Court addresses each argument, in turn.

10 a. Failure to State a Claim

11 As with the breach of contract cause of action, Plaintiff asserts that the bad faith claim fails
12 to allege two key elements: (1) facts showing a breach of the State Farm policy and (2) damages
13 caused by State Farm's purported breach. The Defendant asserts that he expected State Farm to
14 tender payment under the Subject Policy, but instead the company initiated the present matter to
15 avoid payment based on a theory that Plaintiff allowed the Subject Vehicle to be sold.

16 A violation of the covenant of good faith and fair dealing gives rise to a bad-faith tort claim.
17 Allstate Ins. Co. v. Miller, 212 P.3d 318, 324 (2009). Bad faith is defined by the Nevada Supreme
18 Court as "an actual or implied awareness of the absence of a reasonable basis for denying benefits
19 of the [insurance] policy." Id. (quoting Am. Excess Ins. Co. v. MGM, 729 P.2d 1352, 1354-55
20 (Nev. 1986)). To establish a prima facie case of bad-faith refusal to pay an insurance claim, the
21 plaintiff must establish that the insurer had no reasonable basis for disputing coverage, and that
22 the insurer knew or recklessly disregarded the fact that there was no reasonable basis for disputing
23 coverage. See Powers v. United Services Auto. Ass'n, 962 P.2d 596, 604 (Nev. 1998).

24 As noted, the Defendant's counter-claims asserts that State Farm unreasonably refused to
25 tender payment under the Subject Policy and failed to timely process and make payment to the
26 Defendant without good reason. The Court finds that this is sufficient to properly plead a bad faith
27 cause of action.

28 Accordingly, the Court finds that the bad faith cause of action does not fail to state a claim.

1 b. Ripeness

2 The Defendant's Complaint include claims against Mr. Kofi Thomas alleging that he sold
3 the Subject Vehicle without authorization. The Plaintiff asserts that the bad faith claim against
4 itself is unripe because it is contingent upon a determination of whether the Defendant's car was
5 actually stolen by Mr. Thomas.

6 Ripeness "is drawn both from Article III limitations on judicial power and from prudential
7 reasons for refusing to exercise jurisdiction." Twitter, Inc. v. Paxton, 56 F.4th 1170, 1173 (9th Cir.
8 2022) (internal quotation marks omitted) (quoting Ass'n of Irrigated Residents v. EPA, 10 F.4th
9 937, 944 (9th Cir. 2021)). The basic rationale of the ripeness requirement is to prevent the courts,
10 through avoidance of premature adjudication, from entangling themselves in abstract
11 disagreements. Id. (internal quotation marks omitted).

12 The Defendant has adequately alleged a ripe bad faith. The Defendant has alleged that he
13 is entitled to payment upon his claim and that Plaintiff is unreasonably withholding such payment.
14 Defendant has alleged that Plaintiff has been provided with information to establish entitled to
15 payment for claim for his allegedly stolen car. At this stage of this case, this is sufficient to plead
16 a bad faith claim. If it is later determined that Plaintiff had a basis for denying payment (including
17 that the car was not actually stolen) then that issue can be addressed in subsequent motion practice.

18 Accordingly, the bad faith claim is properly pled and will proceed.

19 **D. Punitive Damages**

20 The Plaintiff argues that the Defendant's counter-claim for exemplary or punitive damages
21 lacks factual support because there is no allegation of conduct showing oppression, fraud, or
22 malice. The Defendant asserts that State Farm knew the Subject Vehicle was stolen and still did
23 not tender payment under the Subject Policy.

24 In order to be awarded punitive damages, the Defendant must show that the defendant's
25 conduct was oppressive, fraudulent, or malicious. NRS § 42.005. To show malice and oppression,
26 the Defendant must show a conscious disregard for a person's rights and "knowledge of the
27 probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid
28 those consequences." Countrywide Home Loans, Inc. v. Thitchener, 192 P.3d 243, 252 (Nev.

2008). Punitive damages are not a cause of action, but a remedy. Teva Parenteral Meds., Inc. v. Eighth Judicial Dist. Court, 481 P.3d 1232 n.4 (Nev. 2021).

Viewing the allegations presented in the light most favorable to the Defendant, it is plausible that he could show conscious disregard for his contractual rights and a failure to act to avoid harmful consequences through State Farm's failure to tender under the Subject Policy. Accordingly, the punitive damages request will remain.

VI. CONCLUSION

IT IS THEREFORE ORDERED that Plaintiff's [ECF No. 46] Motion to Dismiss the Defendant's Counter-Claim is **DENIED**.

DATED: March 31, 2024



RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE